

NOT FOR PUBLICATION

SEP 29 2004

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

RICHARD JOHNSON,

Plaintiff - Appellant,

v.

K. JORDAN; et al.,

Defendants - Appellees.

No. 01-16524

D.C. No.

CV-98-00402-RLH/RJJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, District Judge, Presiding

Submitted September 15, 2004**
San Francisco, California

Before: OAKES,*** KLEINFELD, and CALLAHAN, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable James Lowell Oakes, Senior United States Circuit Judge for the Second Circuit, sitting by designation.

Richard Johnson appeals from the district court's denial of his motion to amend the judgment. We find that the district court did not abuse its discretion in denying the motion and affirm.

In August 1996, Johnson was placed under arrest for possession of a controlled substance and possession of narcotics paraphernalia. In September 1996, the state court dismissed the charges against Johnson. At the time of his arrest, Johnson was on parole. He alleged that based on his arrest the Parole Board revoked his parole. Johnson filed this action in the United States District Court of Nevada against the officers who arrested him and the supervising sheriff pursuant to 42 U.S.C. § 1983 for his unlawful arrest and incarceration. Johnson sought compensatory and punitive damages based on the 330 days of incarceration he served following the revocation of his parole.

The defendants filed a motion for judgment on the pleadings arguing that a favorable judgment on Johnson's § 1983 claim would necessarily imply the invalidity of his parole revocation. On March 5, 2001, the district court granted the motion.

Johnson's next action was to file a motion to amend judgment on April 11, 2001. On June 7, 2001, the district court denied the motion to amend, and Johnson filed a notice of appeal on July 5, 2001.

As Johnson did not file his motion to amend within ten days of the judgment dismissing his complaint, the motion did not toll the time for filing a notice of appeal. *Fiester v. Turner*, 783 F.2d 1474, 1475 (9th Cir. 1986). Also, Johnson did not file a notice of appeal within thirty days of the judgment. *See* Fed. R. App. P. 4(a)(1)(A). Accordingly, the notice of appeal filed on July 5, 2001, only brings before us the district court's June 7, 2001, denial of Johnson's motion to amend. *See Fiester*, 783 F.2d at 1475.

A district court's denial of a motion to amend is reviewed for an abuse of discretion. *Bellus v. United States*, 125 F.3d 821, 822 (9th Cir. 1997); *Sheet Metal Workers Int'l Ass'n Local Union, No. 359 v. Madison Indus., Inc.*, 84 F.3d 1186, 1192 (9th Cir. 1996).

The district court did not abuse its discretion in denying Johnson's motion to amend. The motion did not raise any meaningful new fact or issue of law. Accordingly, the district court's order is **AFFIRMED.**